

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 19063 of 2006

Date of Decision: October 29, 2007

M/s Pasupati Spinning and Weaving Mills Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Inderdeep Singh Gill, Advocate,
for the petitioner.

Mr. Sanjiv Bansal, Addl. AG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The petitioner-company is 100% export oriented unit in textile sector. It has approached this Court under Article 226 of the Constitution with the prayer for quashing order dated 21.11.2005 (P-2) and order dated 13.11.2006 (P-4), passed by the Chief Adminis-

trator, Haryana State Agricultural Marketing Board-respondent No. 2 (for brevity, 'the Board') dismissing the appeal filed by them on account of non-payment of pre-deposit of market fee.

The petitioner-company has claimed that the respondent State has been assuring for abolition of market fee in respect of 100% export oriented units and in that regard reference has been made to the letter dated 6.4.2005 (P-1). However, on 21.11.2005, a demand notice was issued by the Market Committee, Rewari, raising a demand of Rs. 4,61,335/- towards market fee as also imposing penalty of equal amount. Accordingly, a recovery order dated 21.11.2005 (P-2) for realisation of total amount of Rs. 9,22,670/- has been passed.

On the receipt of the order dated 21.11.2005 (P-2), the petitioner-company filed an appeal before the Chief Administrator of the Board before taking the plea that the petitioner-company is a sick company and the matter with regard to waiving of market fee is pending consideration of the respondent State. An application along with the appeal was also filed for entertaining the appeal without pre-deposit of market fee (P-3). A further plea was set up that under Rule 13(5) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for brevity, 'the Rules') exemption from payment of market fee has been granted if the agricultural produce is brought for processing from within the State or from outside the State of Haryana. It was claimed that the petitioner-company has already paid the market fee through their supplier in Maharashtra, Gujarat and Madhya Pradesh etc. and a necessary certificate to that effect was appended. However, the application was declined by the Chief Administrator of the Board

and consequently even the appeal has been dismissed by order dated 13.11.2006 (P-4). According to the Chief Administrator, the market fee from 100% export oriented units has not been abolished and, therefore, reference to letter from worthy Chief Minister, Haryana, dated 6.4.2005, was futile. In respect of the claim of the petitioner-company that it is a sick unit, the Chief Administrator held that they had filed a civil suit for restraining the respondents from recovering the market fee assessed. An application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. for restraining the respondent from recovering the amount was also filed, which was also dismissed and the appeal filed against the aforementioned order of the learned Civil Judge, Rewari, was also withdrawn later by the petitioner-company. The Chief Administrator then referred to Rule 31(3)(i) of the Rules to decide the issue as to whether an appeal could be entertained without depositing the amount of market fee assessed. The appeal was accordingly dismissed with the following observation:-

“ Thus the deposition of amount assessed is a condition precedent for entertaining the appeal and the word “shall” used in the above said provision makes the compliance of the provision mandatory. The case law cited by the counsel for the appellant are not disputed wherein the Hon’ble High Court in its original jurisdiction directed the Chief Administrator to entertain the appeal without insisting upon the deposit of amount. However, as per provisions of the rules, the Chief Administrator of the Board has no discretionary powers to entertain the

appeal without deposition of the assessed amount of market fee. Further the Hon'ble High Court in CWP No. 19467 of 1998 (2000(2) RCR (Civil)-689 was pleased to held that "Deposit of entire assessed amount within limitation period prescribed for filing appeal is must. Since the act does not empower the appellate authority to condone delay at all and the appeal cannot be entertained unless it is accompanied by a proof of deposit of the assessed amount, the deposit has to be made within the period of limitation." In a Civil Appeal No. 6081 of 1998 titled as "Haryana State Agricultural Marketing Board Vs Shri Ganesh Rice and General Mills and another," the Hon'ble Supreme Court was pleased to observe, "Compliance with the rules is not a mere technical formality." Therefore, as per provisions of the Rules, 1962 as well as in view of the settled law, it is fully established that the compliance of the rules is mandatory and the appeal cannot be entertained without deposition of the assessed amount of market fee as per provisions of Rules, 1962."

When the matter came up for consideration before us on 13.8.2007, learned counsel for the petitioner-company emphasised on the receipts Annexure P-6 (Colly) to assert that market fee has already been paid on the agricultural produce brought from outside the State of Haryana. It was submitted that if those receipts were to be taken into account then liability of the petitioner-company to pay market fee would be negligible. At that stage, we confronted those receipts to

the learned counsel for the Board who sought and was granted time to seek instructions. He had also requested for permission to verify authenticity of those receipts.

When the matter came up on 18.9.2007 after over one month, learned counsel for the Board had submitted that despite sending letter by him to the Board, no reply was received. Faced with this situation we were constrained to pass the following order:-

“ Learned counsel for respondents No. 2 and 3 has not been able to apprise the Court about the authenticity of the receipt to which reference has been made in the last order dated 13.8.2007. He has submitted that a letter was addressed to respondents No. 2 and 3 by him and no reply in that regard has been received by him.

On his request we adjourn the hearing of the case to 29.10.2007.

In case the requisite information in terms of order dated 13.8.2007 passed by this Court is not received, then the Chief Administrator of Haryana State Agricultural Marketing Board shall remain present in the Court with record.

A copy of this order be given dasti to learned counsel for respondents No. 2 and 3 for onward communication to the concerned quarter under the signatures of the Bench Secretary.”

Eventually an additional affidavit dated 27.10.2007, was filed by Shri Raj Kumar, Executive Officer-cum-Secretary, Market

Committee, Rewari, disclosing that out of 9 firms, who had supplied the agricultural produce to the petitioner-company, on verification six of them were found to be authentic and information with regard to remaining three was still awaited. In respect of agricultural produce purchased from Madhya Pradesh, the respondents have taken the stand that there un-ginned cotton alone is considered as agricultural produce on which market fee is payable and since the petitioner-company had purchased ginned cotton and, therefore, no market fee was payable. In the respondent State, un-ginned and ginned cotton are the scheduled items and both are assessable to market fee. The plea set up is that the claim of the petitioner-company for exemption from payment of market fee under Rule 30(5) of the Rules is without any substance.

Mr. Kanwaljit Singh, learned senior counsel for the petitioner-company has argued that once the petitioner-company has paid the market fee in Madhya Pradesh, Gujarat and Maharashtra or anywhere outside the State of Haryana or within the State of Haryana then Rule 30(5) of the Rules would not be attracted and exemption from payment of market fee would be available. According to learned counsel, if the receipts produced by the petitioner [Annexure P-6 (Colly)] are authentic, as by and large has been conceded in the affidavit dated 27.10.2007, filed by Shri Raj Kumar, Executive Officer-cum-Secretary, Market Committee, Rewari, the petitioner could not be liable to pay any market fee.

Mr. Sanjiv Bansal, learned State counsel, has submitted that the processed cotton (ginned cotton) which has been purchased

by the petitioner-company from State like Madhya Pradesh is not assessable to market fee in that State whereas both ginned and un-ginned cotton is subjected to market fee in the respondent State of Haryana. However, he has not been able to wriggle out of the statement made in para 6 of the affidavit dated 27.10.2007 that the petitioner had purchased ginned cotton from the firm R.S. Cottmark (India) Pvt. Ltd., who had paid market fee on the un-ginned cotton. As such, no fee has been paid in respect of the purchases made by the petitioner-company on the ginned cotton.

After hearing learned counsel for the parties and perusing the paper book, we are of the considered view that this is a fit case where the requirement of pre-deposit of market fee should have been waived of for hearing of the appeal. It is on record that out of nine receipts, six have been found to be authentic showing that the market fee has been paid by the petitioner, although authenticity of remaining three receipts with regard to deposit of market fee, information was awaited and some argument has been raised with regard to assessability of market fee in respect of the State of Madhya Pradesh. The petitioner-company may be entitled to exemption under Section 30(5) of the Rules if they are able to show that the market fee stands already paid. In such an eventuality there would be hardly any liability to pay the market fee and then no question of penalty would arise. Therefore, taking into consideration the facts and circumstances of the present case, we are satisfied that the appellate authority should not have insisted on the requirement of pre-deposit. In any case, the right of one appeal is recognised in all the jurisdiction and such a right cannot

be moonshine by imposing the liability to pay the whole amount of market fee. We are further of the view that the Board cannot take inconsistent stand. In C.W.P. No. 19064 of 1997, decided on 29.4.1998 (P-5), the Board has conceded before this Court that the appeal would be decided without insisting on payment of pre-deposit of market fee. Therefore, the impugned order dated 13.11.2006 (P-4), passed by the Chief Administrator, is liable to be set aside.

In view of the above, this petition succeeds. Impugned order dated 13.11.2006 (P-4), passed by the Chief Administrator is set aside. He is further directed to decide the appeal without insisting upon the pre-deposit of market fee. However, it is made clear that any observation made in this order shall not be construed as an expression of opinion as we have not delve deep into the merit of the case and have decided the issue at first blush. The Chief Administrator accordingly shall feel free to decide the matter strictly in accordance with law. Keeping in view the relevant factors like prima facie case, irreparable loss and balance of convenience, the petitioner-company is held entitled to its costs, which we assess at Rs. 10,000/-

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 29, 2007
Pkapoor